IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants:　　　　SUNDARESAN, et al.　　　　Patent Application

Application No.:　　10/676,219　　　　Group Art Unit:　　2141

Filed:　　　　October 1, 2003　　　　Examiner:　　Gillis, Brian J.

For:　　METHOD AND APPARATUS FOR TRANSACTION TRACKING IN A WEB
PRESENTATION ARCHITECTURE

<u>APPEAL BRIEF</u>

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I. Real Party in Interest

The assignee of the present application is Hewlett-Packard Development Company, L.P.

II. Related Appeals and Interferences

There are no related appeals or interferences known to the Appellants.

III. Status of Claims

Claims 6, 14 and 22 have been cancelled. Claims 1-5, 7-13, 15-21 and 23-29 are pending. Claims 1-5, 7-13, 15-21 and 23-29 are rejected. This Appeal involves Claims 1-5, 7-13, 15-21 and 23-29.

IV. Status of Amendments

All proposed amendments have been entered. An amendment subsequent to the Final Action has not been filed.

<u>V. Summary of Claimed Subject Matter</u>

Independent Claims 1, 9, 17 and 25 of the present application pertain to various embodiments for transaction tracking in a web presentation architecture.

Independent Claim 1 recites, "A system comprising presentation architecture 100 for creating applications 204." This embodiment is described at least at 0021 on page 9 to 0043 on page 18; and Figures 2-4. "A controller generator that is adapted to provide an application 204 with a controller 102 that receives a request 148 to perform a transaction and completes the transaction in part, by responding 150 to the request 148" is described at least at 0002 on page 2; 0023 on page 10; 1st sentence of 0041 on page 17; 0046 on page 19; 0090 on pages 59-61; and Figures 2-4. "Transaction tracking logic 200 that is adapted to provide the application 204 with a plurality of transaction managers (128-132, 208-212), each transaction manager (128-132, 208-212) being adapted to record tracking information about transactions of a specific type, wherein the transaction tracking logic is adapted to provide the application 204 with an ability to interface with a logging program 220 to log data collected by the plurality of transaction managers (128-132, 208-212)" is described at least at 0036-0042 on pages 15-18; 0090 on pages 59-61; and Figures 2-4.

Independent Claim 9 recites, "A method of creating applications 204." This embodiment is described at least at 0021 on page 9 to 0043 on page 18; and Figures 2-4. "Creating, with a processor-based device, a controller 102 that receives a request 148 to perform a transaction and completes the transaction by responding 150 to the request 148" is described at least at 0002 on page 2; 0023 on page 10; 1st sentence of 0041 on page 17; 0046 on page 19; 0090 on pages 59-61; and Figures 2-4. "Providing a plurality of transaction managers (128-132, 208-212), each transaction manager (128-132, 208-212) being adapted to

record tracking information about transactions of a specific type, wherein the applications 204 have an ability to interface with a logging program 220 to log data collected by the plurality of transaction managers (128-132, 208-212)," is described at least at 0036-0042 on pages 15-18; 0090 on pages 59-61; and Figures 2-4.

Independent Claim 17 recites, "A system for creating applications 204." This embodiment is described at least at 0021 on page 9 to 0043 on page 18; and Figures 2-4. "Means for providing an application 204 with a controller 102 that receives a request 148 to perform a transaction and completes the transaction by responding 150 to the request 148," is described at least at 0002 on page 2; 0023 on page 10; 1st sentence of 0041 on page 17; 0046 on page 19; 0090 on pages 59-61; and Figures 2-4. "Means for providing the application 204 with a plurality of transaction managers (128-132, 208-212), each transaction manager (128-132, 208-212) being adapted to record tracking information about transactions of a specific type, wherein the applications 204 have an ability to interface with a logging program 220 to log data collected by the plurality of transaction managers (128-132, 208-212)," is described at least at 0036-0042 on pages 15-18; 0090 on pages 59-61; and Figures 2-4.

Independent Claim 25 recites, "A tangible machine-readable medium." "Controller generator code adapted to provide an application 204 with a controller 102 that receives a request 148 to perform a transaction and completes the transaction by responding 150 to the request 148," is described at least at 0002 on page 2; 0023 on page 10; 1st sentence of 0041 on page 17; 0046 on page 19; 0090 on pages 59-61; Figures 2-4. "Transaction tracking code 200 adapted to provide the application 204 with a plurality of transaction managers (128-132, 208-212), each transaction manager (128-132, 208-212) being adapted to record tracking information about transactions of a specific type, wherein the transaction tracking logic is

adapted to provide the application 204 with an ability to interface with a logging program 220 to log data collected by the plurality of transaction managers (128-132, 208-212)," is described at least at 0036-0042 on pages 15-18; 0090 on pages 59-61; and Figures 2-4.

VI. Grounds of Rejection to Be Reviewed on Appeal

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter.

2. Claim 25 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particular point out and distinctly claim the subject matter which Appellants regard as the invention.

3. Claims 1-4, 6-12, 14-20 and 22-28 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0068560 by Oulu et al. (referred to hereinafter as "Oulu") in view of U.S. Patent No. 6,714,976 by Wilson et al. (referred to hereinafter as "Wilson").

4. Claims 5, 13, 21 and 29 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oulu in view of Wilson and further in view of U.S. Patent No. 7,103,782 by Tugenberg et al. (referred to hereinafter as "Tugenberg").

<center>VII. Argument</center>

1. Whether the Specification Fails to Provide Proper Antecedent Basis for the Claimed Subject Matter.

The Office Action states in the first paragraph on page 2 that the claimed "tangible machine-readable medium" in Claims 25-29 lacks antecedent basis in the specification. Appellants respectfully disagree. First, Claim 25 clearly states that a tangible machine-readable medium comprises...code. Second, Appellants respectfully submit that any one of ordinary skill in the art would understand what a "tangible machine-readable medium" is.

2. Whether Claim 25 Fails to Particular Point Out and Distinctly Claim the Subject Matter which Appellants Regard as the Invention.

The Office Action states on page 2 that there is insufficient antecedent basis for the limitation "the transaction tracking logic" recited by Claim 25. Appellants respectfully disagree. The specification provides sufficient antecedent basis at least at paragraph 0040 and Figure 2. Figure 2 clearly illustrates transaction tracking code 200 adapted to provide the application 204 with a plurality of transaction managers 128-132, 208-212.

3. Whether Claims 1-4, 6-12, 14-20 and 22-28 are Unpatentable Under 35 U.S.C. §103(a) by Oulu in view of Wilson.

Appellants have reviewed the cited art and respectfully submit that the embodiments as recited in Claims 1-4, 6-12, 14-20 and 22-28 are not rendered obvious by Oulu or Wilson, alone or in combination, in view of the following rationale.

"As reiterated by the Supreme Court in KSR, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual

inquiries" including "[a]scertaining the differences between the claimed invention and the prior art" (MPEP 2141(II)). "In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious" (emphasis in original; MPEP 2141.02(I)). Appellant notes that "[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art" (emphasis added; MPEP 2141(III)).

Applicants respectfully submit that "[i]t is improper to combine references where the references teach away from their combination" (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicants respectfully note that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention" (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Applicants respectfully submit that there is no motivation to combine the teachings of Oulu and Wilson, because Wilson teaches away from the suggested modification.

> Claim 1 recites,
> A system comprising presentation architecture for creating applications, the presentation architecture comprising:
> a controller generator that is adapted to provide an application with a controller that receives a request to perform a transaction and completes the transaction in part, by responding to the request; and
> transaction tracking logic that is adapted to provide the application with a plurality of transaction managers, each transaction manager being adapted to record tracking information about transactions of a specific type, wherein the transaction tracking logic is adapted to provide the application with an ability to interface with a logging program to log data collected by the plurality of transaction managers.

Appellants understand Oulu to teach the following: a probe that runs on an application server instruments specific application components by, for example, adding code to specific application components (abstract). Appellants understand methods to be an example of Oulu's application components. The added code is used for tracking execution start and stop times (abstract). For example, the probe may add "start" calls at the beginning of methods and "end" calls at the end of methods (0064). According to one embodiment, the application components can be specified using a user specified configuration file (0040, 0067).

According to one embodiment, a transaction is initiated by an agent computer that sends a request to a web server that communicates with an application server where the specified application components reside (0034). A controller, in one embodiment, or on-site personal, according to another embodiment, define transactions and assign transactions to specific agent computers (0042, 0045). An agent can encode data into a request (0043), where the encoded data signals to the probe that transaction breakdown of data collection is enabled (also referred to as "coloring" by Oulu). A start method can use the encoded data from the request to determine whether a thread belongs to a monitored transaction (0076-0077). Similar processing can be used by an end method (0080). The probe can report captured measurement data and encoded data, which is extracted by the probe, to a database (0044, 0084). The database can be queried to generate reports that are used by developers to improve the design of the application (0051-0053).

Appellants respectfully agree with the Office Action's statement that Oulu does not teach "transaction tracking logic...a plurality of transaction managers, each transaction

manager being adapted to record tracking information about transactions of a specific type," as recited by Claim 1.

Appellants do not understand Oulu's probe/inserted code, or any other entity taught by Oulu, to cause a logging program to log data. Appellants do not understand Oulu's probe/inserted code, or any other entity taught by Oulu, to provide Oulu's application with <u>an ability to interface</u> <u>with</u> <u>a logging program</u>. Appellants do not understand Oulu's probe/inserted code, or any other entity taught by Oulu, to enable Oulu's application to interface with a logging program to log data collected by a plurality of transaction managers.

Appellants understand Wilson to <u>teach away from</u> Oulu and therefore the teachings of Wilson and Oulu cannot be combined to arrive at the embodiment recited by Claim 1. For example, Wilson teaches away from "intrusive approaches" that require editing, re-compiling or are dependent upon the cooperation of vendor providers of an application program (Col. 2 line 64 to Col. 3 line 6). Appellants understand Oulu to teach an "invasive approach" that involves modifying code, for example, by inserting code and/or modifying code, for example, through cooperation of vendor providers of an application program.

The <u>Response to Arguments section</u> on page 12 states "Oulu et al teaches a probe is able to interface with a database to report various measurements in association with particular transactions (Oulu et al, paragraph 38). Appellants understand Oulu's database to provide storage. Appellants do not understand Oulu's database, or any other entity associated with Oulu, to teach "a logging program," as recited by Claim 1. Further, for reasons already provided herein, Appellants do not understand Oulu's probe/inserted code to teach "an interface," as recited by Claim 1.

For at least these reasons, Appellants submit that independent Claim 1 is not obvious over Oulu and Wilson, alone or in combination, as the Rejection fails to establish a prima facie case for obviousness of Claim 1. For similar reasons, Appellants submit that independent Claims 9, 17 and 25 are not obvious over Oulu and Wilson, alone or in combination, as the Rejection fails to establish a prima facie case for obviousness of Claims 9, 17 and 25. As such, Appellants submit that independent Claims 1, 9, 17 and 25 are in condition for allowance.

Claims 2-5, 7 and 8 depend from Claim 1. Claims 10-13, 15 and 16 depend on Claim 9. Claims 18-21, 23 and 24 depend on Claim 17. Claims 26-29 depend on Claim 25. Hence, it is respectfully submitted that these dependent claims are patentable over Oulu and Wilson for the reasons discussed above, and are in condition for allowance by virtue of their dependence upon an allowable base claim.

4. Whether Claims 5, 13, 21 and 29 are Unpatentable Under 35 U.S.C. §103(a) by Oulu in view of Wilson and further in view of Tugenberg.

Appellants have reviewed the cited art and respectfully submit that the embodiments as recited in Claims 5, 13, 21 and 29 are not rendered obvious by Oulu, Wilson or Tugenberg, alone or in combination, in view of the following rationale.

As already stated, Appellants understand independent Claims 1, 9 and 17 to be patentable over the combination of Oulu and Wilson. Appellants respectfully agree with the Office Action that Tugenberg does not teach or suggest the embodiments recited by independent Claims 1, 9, and 17. Claims 5, 13 and 21 depend respectively on independent Claims 1, 9 and 17. Hence, it is respectfully submitted that these dependent claims are patentable over Oulu,

Wilson, and Tugenberg for the reasons discussed above, and are in condition for allowance by virtue of their dependence upon an allowable base claim.

Conclusion

Appellants believe that pending Claims 1-5, 7-13, 15-21 and 23-29 are patentable over Oulu, Wilson, and Tugenberg. As such, Appellants submit that Claims 1-5, 7-13, 15-21 and 23-29 are patentable over the cited references.

Appellants respectfully request that the rejection of Claims 1-5, 7-13, 15-21 and 23-29 be reversed. The Appellants wish to encourage the Examiner or a member of the Board of Patent Appeals to telephone the Appellants' undersigned representative if it is felt that a telephone conference could expedite prosecution.

Respectfully submitted,
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VIII. Appendix - Clean Copy of Claims on Appeal

1.   A system comprising presentation architecture for creating applications, the presentation architecture comprising:

    a controller generator that is adapted to provide an application with a controller that receives a request to perform a transaction and completes the transaction in part, by responding to the request; and

    transaction tracking logic that is adapted to provide the application with a plurality of transaction managers, each transaction manager being adapted to record tracking information about transactions of a specific type, wherein the transaction tracking logic is adapted to provide the application with an ability to interface with a logging program to log data collected by the plurality of transaction managers.

2.   The system set forth in claim 1, wherein the plurality of transaction managers comprises a business activity manager.

3.   The system set forth in claim 1, wherein the plurality of transaction managers comprises a performance activity manager.

4.   The system set forth in claim 1, wherein the plurality of transaction managers comprises an error activity manager.

5.   The system set forth in claim 1, wherein the transaction tracking logic is adapted to provide the application with an ability to track debug activity.

7.   The system set forth in claim 1, wherein the transaction tracking logic is adapted to provide the application with an ability to output data to at least one of a file system, a database, publishing a messaging queue and a Simple Network Management Protocol ("SNMP")-based monitoring program.

8.   The system set forth in claim 1, wherein the tracking information comprises timing measurements with respect to the transaction.

9.   A method of creating applications, the method comprising:
creating, with a processor-based device, a controller that receives a request to perform
        a transaction and completes the transaction by responding to the request; and
providing a plurality of transaction managers, each transaction manager being adapted
        to record tracking information about transactions of a specific type, wherein
        the applications have an ability to interface with a logging program to log data
        collected by the plurality of transaction managers.

10.   The method set forth in claim 9, comprising defining one of the plurality of transaction managers to be a business activity manager.

11.   The method set forth in claim 9, comprising defining one of the plurality of transaction managers to be a performance activity manager.

12.   The method set forth in claim 9, comprising defining one of the plurality of transaction managers to be an error activity manager.

13. The method set forth in claim 9, comprising providing the applications with an ability to track debug activity.

15. The method set forth in claim 9, comprising providing the applications with an ability to output data to at least one of a file system, a database, publishing a messaging queue and a Simple Network Management Protocol ("SNMP")-based monitoring program.

16. The method set forth in claim 9, comprising defining the tracking information to comprise timing measurements with respect to the transaction.

17. A system for creating applications, the system comprising:

means for providing an application with a controller that receives a request to perform a transaction and completes the transaction by responding to the request; and

means for providing the application with a plurality of transaction managers, each transaction manager being adapted to record tracking information about transactions of a specific type, wherein the applications have an ability to interface with a logging program to log data collected by the plurality of transaction managers.

18. The system set forth in claim 17, wherein the plurality of transaction managers comprises a business activity manager.

19. The system set forth in claim 17, wherein the plurality of transaction managers comprises a performance activity manager.

20.   The system set forth in claim 17, wherein the plurality of transaction managers comprises an error activity manager.

21.   The system set forth in claim 17, wherein the means for providing the application with a plurality of transaction managers is adapted to provide the application with an ability to track debug activity.

23.   The system set forth in claim 17, comprising transaction tracking logic adapted to provide the applications with an ability to output data to at least one of a file system, a database, publishing a messaging queue and a Simple Network Management Protocol ("SNMP")-based monitoring program.

24.   The system set forth in claim 17, wherein the tracking information comprises timing measurements with respect to the transaction.

25.   A tangible machine-readable medium, comprising:

controller generator code adapted to provide an application with a controller that

        receives a request to perform a transaction and completes the transaction by

        responding to the request; and

transaction tracking code adapted to provide the application with a plurality of

        transaction managers, each transaction manager being adapted to record

        tracking information about transactions of a specific type, wherein the

        transaction tracking logic is adapted to provide the application with an ability

to interface with a logging program to log data collected by the plurality of transaction managers.

26.   The tangible machine-readable medium set forth in claim 25, wherein the plurality of transaction managers comprises a business activity manager.

27.   The tangible machine-readable medium set forth in claim 25, wherein the plurality of transaction managers comprises a performance activity manager.

28.   The tangible machine-readable medium set forth in claim 25, wherein the plurality of transaction managers comprises an error activity manager.

29.   The tangible machine-readable medium set forth in claim 25, wherein the transaction tracking logic is adapted to provide the application with an ability to track debug activity.

IX. Evidence Appendix

No evidence is herein appended.

X. Related Proceedings Appendix

No related proceedings.